

FILED

**IN THE DISTRICT COURT OF MCINTOSH COUNTY
STATE OF OKLAHOMA**

DEC 15 2020
LISA RODEBUSCH, Court Clerk
McINTOSH COUNTY
By Deputy

WILLIAM B. CAPERS, JR. and
JENNIFER K. CAPERS,

Plaintiffs,

v.

KOSS CONSTRUCTION COMPANY,

Defendant.

Case No. CS-20-97

PETITION

The Plaintiffs, William B. Capers, Jr. and Jennifer K. Capers, for their Petition against the Defendant, Koss Construction Company ("Koss"), allege and state:

1. Plaintiffs are residents of the State of Texas.
2. Upon information and belief, Koss is a Kansas corporation with its headquarters in Topeka, Kansas.
3. Upon information and belief, Koss bid for and won a contract by the Oklahoma Department of Transportation to perform certain construction work on US 69 in McIntosh County, Oklahoma. On July 12, 2019, Koss was in the process of working on the highway and created construction dust so thick that drivers on the roadway were unable to see through it. Koss did not utilize a flag man or other employee to motion oncoming vehicles to slow down before driving into the cloud of dust.
4. Plaintiffs were traveling in a northerly direction on US 69 at approximately 8:30 a.m., when they approached the dust cloud created by Koss. Plaintiffs saw another vehicle ahead of them, going in the same direction, drive into the dust cloud, and therefore assumed it was appropriate and safe to do so. Nonetheless, Plaintiffs slowed down significantly before entering the dust cloud.

EXHIBIT 1

5. Unknown to Plaintiffs, the vehicle in front of them had come to a complete stop in the middle of the dust cloud. Unable to see, and afraid to stop, Plaintiffs drove into the rear of the vehicle in front of them. The air bags in Plaintiffs' car did not deploy, confirming their low speed.

6. William B. Capers, Jr. suffered a fractured foot, thus requiring medical care, including surgery. Jennifer K. Capers suffered severe bruising and abrasions, and likewise sought and obtained medical care and treatment.

7. The accident described above and Plaintiffs' resulting injuries and damages were caused as a result of the negligence of Koss. Koss' negligence includes, but is not limited to, the following:

(a) Koss failed to warn oncoming drivers of the dense nature of the construction dust created by Koss which prevented visibility;

(b) Koss failed to properly apply a base stabilizer on a day the wind was blowing the residue across the roadway, completely obstructing the vision of oncoming drivers;

(c) As discovery progresses, Plaintiffs may articulate additional bases of their negligence claim against Koss.

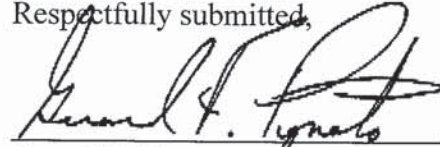
8. At the time of the accident described above, William B. Capers, Jr. and Jennifer K. Capers were married and remain married today. As a result of the accident and their injuries sustained, they each suffered emotional distress from observing the other's injuries and slow recuperation. Their emotional distress was caused as a direct result of the negligence of Koss.

9. William B. Capers, Jr. and Jennifer K. Capers have suffered a temporary loss of consortium of each other as a result of the accident caused by Koss' negligence.

10. The actions of Koss, described above, amount to gross negligence, warranting the imposition of punitive damages, for purposes of punishment and to deter others from like conduct.

WHEREFORE, the Plaintiffs, William B. Capers, Jr. and Jennifer K. Capers, pray for judgment against the Defendant, Koss, for an undetermined amount, but greater than \$10,000.00.

Respectfully submitted,



Gerard F. Pignato, OBA No. 11473
RYAN WHALEY COLDIRON JANTZEN
PETERS & WEBBER, PLLC
400 North Walnut Avenue
Oklahoma City, Oklahoma 73104
Telephone: 405-239-6040
Facsimile: 405-239-6766
Email: jerry@ryanwhaley.com
ATTORNEYS FOR PLAINTIFFS

ATTORNEY LIEN CLAIMED
JURY TRIAL DEMANDED